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FIRST GENERAL COUNSEL'S REPORT

DATE OF NOTIFICATIONS: Feb. 25, 2016;

Feb. 29, 2016; March 8, 2016; June 29, 2016

DATE OF LAST RESPONSE: Aug. 26, 2016

DATE ACTIVATED: Oct. 14, 2016

EXPIRATION OF SOL: Dec. 24, 2020

ELECTION CYCLE: 2016

MUR 7014 (Feb. 19, 2016)

Citizens for Responsibility and Ethics in Washington

Noah Bookbinder

MUR 7017 (Feb. 24, 2016)

Campaign Legal Center

Democracy 21

J. Gerald Hebert, Paul S. Ryan, Tara Malloy

MUR 7019 (Mar. 2, 2016)

Campaign Legal Center

Democracy 21

Paul S. Ryan, Fred Wertheimer

MUR 7090 (June 23, 2016)

Daniel Levin

MURs 7014 / 7017

DE First Holdings

Vivek Garipalli

Coalition for Progress and Ana Rivas

in her official capacity as treasurer

MUR 7019

Décor Services, LLC

America Leads and Timothy Koch

in his official capacity as treasurer

Unknown Respondent

MUR 7090

DE First Holdings

Vivek Garipalli

Coalition for Progress and Ana Rivas

in her official capacity as treasurer

Décor Services, LLC

America Leads and Timothy Koch
in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. §§ 30102, 30103, 30104
52 U.S.C. § 30122
11 C.F.R. § 110.4(b)
11 C.F.R. § 103.3(b)(2)

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter involves two alleged contributions in the name of another. In the first transaction, DE First Holdings ("DEFH"), a Delaware statutory trust, contributed \$1 million to Coalition for Progress ("CFP"), an independent-expenditure-only political committee ("IEOPC"), one day after DEFH's formation. Complainants allege that DEFH was not the true contributor, and that DEFH and CFP knowingly facilitated and accepted, respectively, a contribution in the name of another. Complainants also claim that DEFH failed to register and report as a political committee despite meeting the statutory threshold for committee status, and that CFP violated the law by failing to refund the contribution within thirty days of learning that it was prohibited. In response to these allegations, Vivek Garipalli, a healthcare entrepreneur, acknowledged that he transferred funds to DEFH for it to make a contribution, but he and DEFH contend that the Commission should dismiss the allegations given the lack of prior notice regarding the legal standard for liability under 52 U.S.C. § 30122 as applied to contributions made by a limited liability company ("LLC"). CFP amended its disclosure reports to attribute the contribution to Garipalli, and denies that its conduct violated the law.

In the second transaction, Décor Services, LLC, contributed \$250,000 to America Leads, an IEOPC, sixteen days after its formation. Complainants assert that an unknown individual, not

1 Décor Services, was the true contributor, and that Décor Services knowingly facilitated, and
2 America Leads knowingly accepted, a contribution in the name of another. Complainants further
3 allege that Décor Services met the statutory threshold for political committee status but failed to
4 register with the Commission and file required disclosure reports, and that America Leads
5 violated the Commission's regulations by not refunding the contribution within thirty days of
6 learning that it was illegal. These Respondents deny that they violated the law as alleged.

7 With respect to the first transaction, in light of Garipalli's admission that he transferred
8 funds to DEFH for the specific purpose of making a contribution to CFP, we recommend that the
9 Commission find reason to believe that Garipalli and DEFH violated 52 U.S.C. § 30122, and
10 investigate whether CFP knowingly accepted a contribution in the name of another and whether
11 DEFH met the statutory threshold for political committee status. We recommend that the
12 Commission dismiss the allegation that CFP violated 11 C.F.R. § 103.3(b), and take no action at
13 this time as to the allegations that CFP violated 52 U.S.C. § 30122 and that DEFH was required
14 to register and report as a political committee.

15 With respect to the second transaction, the factual record before the Commission raises a
16 reasonable inference that Décor Services was not the true source of the funds that it purported to
17 contribute to America Leads. Therefore, we recommend that the Commission find reason to
18 believe that Décor Services and an unknown respondent violated 52 U.S.C. § 30122, and conduct
19 an investigation. We also recommend that the Commission take no action at this time as to the
20 allegations that America Leads and Timothy A. Koch in his official capacity as treasurer violated
21 52 U.S.C. § 30122 and 11 C.F.R. § 103.3(b)(2), and as to the allegation that Décor Services was
22 required to register and report as a political committee.

II. FACTUAL BACKGROUND

Coalition for Progress (“CFP”) registered with the Commission as an IEOPC on August 5, 2015, and Ana Rivas is its treasurer of record.¹ CFP reported receiving a \$1 million contribution from DE First Holdings (“DEFH”) on December 24, 2015.² DEFH is a statutory trust formed under Delaware law on December 23, 2015.³ DEFH is taxed as a corporation, and its registered agent is the Delaware Trust Company, located at 2711 Centerville Road, Suite 210, Wilmington, DE 19808.⁴ That address is listed on CFP’s 2015 Year-End report disclosing DEFH’s purported \$1 million contribution to CFP on December 24, 2015.⁵

Vivek Garipalli is a healthcare entrepreneur.⁶ Garipalli acknowledges transferring \$1 million from his personal account to DEFH for the purpose of making a contribution to CFP, and he asked CFP to amend its disclosure reports to reflect that he made the contribution at issue.⁷

¹ CFP Statement of Organization at 1 (Aug. 5, 2015). CFP has not made any independent expenditures in the 2016 election cycle. News articles initially indicated that CFP was formed primarily to support Steven Fulop, mayor of Jersey City, NJ, in a potential 2017 campaign for governor of New Jersey. *See* Matt Friedman, *Sources: Booker Confidant Forms Super PAC to Boost Fulop*, POLITICO (Dec. 29, 2015), <http://www.politico.com/states/new-jersey/story/2015/12/sources-booker-confidant-forms-super-pac-to-boost-fulop-096810>. CFP, however, asserts that it intends to support multiple candidates, and Fulop has announced that he will run for reelection as mayor of Jersey City, NJ, and not for governor. *See* Terrence T. McDonald, *Fundraising slows for super PAC linked to Fulop* (Dec. 28, 2016), http://www.nj.com/hudson/index.ssf/2016/12/fundraising_slows_for_super_pac_linked_to_fulop.html.

² CFP 2015 Year-End Report at 19 (Jan. 29, 2016).

³ Delaware Entity Search Result, “DE First Holdings,” (Oct. 20, 2016), <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>. Under Delaware law, a statutory trust is “an unincorporated association” and “a separate legal entity” that “may be organized to carry on any lawful business or activity[.]” Del. Code tit. 12, § 3801(g). The beneficial owners of a statutory trust have limited personal liability for the trust. *See id.* § 3803(a). Statutory trusts may also elect to be taxed as a corporation or partnership under the Internal Revenue Code. *See id.* § 3809. For the Act’s purposes, therefore, a Delaware statutory trust is the functional equivalent of a limited liability company.

⁴ DEFH 7014 Resp. at 3.

⁵ *See* CFP 2015 Year-End Report at 19 (Jan 29, 2016).

⁶ Clover Health, *Our Story* (Oct. 20, 2016), <https://www.cloverhealth.com/en/about-us/our-story>.

⁷ DEFH 7014 Resp. at 3. Because Garipalli was not publicly associated with the contribution, he was not named in any of the complaints and was therefore not notified, but on June 1, 2016, after the complaints in MURs

1 On July 15, 2016, CFP amended its 2015 Year-End Report to disclose that Garipalli, not DEFH,
2 made a \$1 million contribution on December 24, 2015.⁸

3 Décor Services is an LLC that was formed under Delaware law on January 12, 2016.⁹ On
4 January 28, 2016, it made a \$250,000 contribution to America Leads, an IEOPC that primarily
5 supported Chris Christie's 2016 presidential campaign.¹⁰ America Leads registered with the
6 Commission on February 23, 2015, and Timothy Koch is its treasurer of record.¹¹ On February
7 5, 2016, Décor Services made a second \$250,000 contribution to Conservative Solutions PAC,
8 an IEOPC that primarily supported Marco Rubio's 2016 campaign for president.¹² The address
9 listed for Décor Services on the relevant disclosure reports belongs to its registered agent, the
10 Corporation Service Company.¹³ According to the Designation of Counsel form that Décor

7014 and 7017 had been filed, Garipalli requested that CFP amend its disclosure report to reflect that he, not DEFH, made the \$1 million contribution on December 24, 2015, and he joined the DEFH responses.

⁸ CFP Amended 2015 Year-End Report at 24-25 (July 15, 2016).

⁹ MUR 7019 Compl. at 2 (Mar. 2, 2016). There is no available information regarding the entity's tax status.

¹⁰ *Id.*; America Leads 2016 February Monthly Rpt. at 9 (Feb. 19, 2016); *e.g.*, America Leads FEC Schedule E: 24/48 Hour Report of Independent Expenditures ("IE Report") (Feb. 8, 2016); America Leads IE Report (Jan. 12, 2016); America Leads IE Report (Nov. 3, 2015); America Leads IE Report (July 10, 2015). The committee also made some independent expenditures in opposition to John Kasich's 2016 campaign for president. *E.g.*, America Leads IE Report (Feb. 2, 2016); America Leads IE Report (Jan. 31, 2016); America Leads IE Report (Jan. 28, 2016).

¹¹ America Leads Statement of Organization at 1 (Feb. 23, 2015).

¹² Conservative Solutions PAC 2016 March Monthly Rpt. at 16 (Mar. 20, 2016); *e.g.*, Conservative Solutions PAC IE Report (Feb. 2, 2016); Conservative Solutions PAC IE Report (Dec. 15, 2015); Conservative Solutions PAC IE Report (Oct. 31, 2015). The committee also made independent expenditures in opposition to other candidates including, Ted Cruz, *e.g.*, Conservative Solutions PAC IE Report (Jan. 28, 2016), Chris Christie, *e.g.*, Conservative Solutions PAC IE Report (Feb. 2, 2016), John Kasich, *e.g.*, Conservative Solutions PAC IE Report (Feb. 2, 2016); and Donald Trump, *e.g.*, Conservative Solutions PAC IE Report (Feb. 27, 2016).

¹³ MUR 7019 Compl. at 3.

Services filed in this matter, Scott Silver is the entity's Vice President and Secretary.¹⁴ He is the only known person associated with the entity.¹⁵

III. LEGAL ANALYSIS

A. Contributions in the Name of Another

1. Legal Standard

The Federal Election Campaign Act of 1971, as amended ("Act"), provides that a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."¹⁶ The term "person" for purposes of the Act and Commission regulations includes partnerships, corporations, and "any other organization or group of persons."¹⁷ The law prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.¹⁸ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

¹⁴ Décor Services, Statement of Designation of Counsel, MUR 7019 (April 20, 2016).

¹⁵ See MUR 7019 Compl. at 3 (stating that the names of the principals of Décor Services are not publicly available).

¹⁶ 52 U.S.C. § 30101(8)(A).

¹⁷ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. See 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to "contributions by a person made on behalf of or to a candidate." *Id.* By their terms, neither the earmarking provision of the Act nor the Commission's implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

¹⁸ 52 U.S.C. § 30122; see 11 C.F.R. § 110.4(b).

- 1 (i) Giving money or anything of value, all or part of which was provided to the
2 contributor by another person (the true contributor) without disclosing the
3 source of money or the thing of value to the recipient candidate or committee
4 at the time the contribution is made; or
- 5 (ii) Making a contribution of money or anything of value and attributing as the
6 source of the money or thing of value another person when in fact the
7 contributor is the source.¹⁹

8 Commission regulations also prohibit “knowingly help[ing] or assist[ing] any person in
9 making a contribution in the name of another.”²⁰ The requirement that a contribution be made in
10 the name of its true source promotes Congress’s objective of ensuring the complete and accurate
11 disclosure by candidates and committees of the political contributions they receive.²¹ Courts
12 therefore have uniformly rejected the assertion that “only the person who actually transmits
13 funds . . . makes the contribution,”²² recognizing that “it is implausible that Congress, in seeking
14 to promote transparency, would have understood the relevant contributor to be [an] intermediary
15 who merely transmitted the campaign gift.”²³

16 Consequently, both the Act and the Commission’s implementing regulations provide that
17 a person who furnishes another with funds for the purpose of contributing to a candidate or

¹⁹ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

²⁰ *Id.* § 110.4(b)(1)(iii).

²¹ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.”) (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

²² *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

²³ *O’Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

1 committee "makes" the resulting contribution.²⁴ This is true whether funds are advanced to
2 another person to make a contribution in that person's name or promised as reimbursement of a
3 solicited contribution.²⁵ Because the concern of the law is the true source from which a
4 contribution to a candidate or committee originates, we look to the structure of the transaction
5 itself and the arrangement between the parties to determine who "made" a given contribution.²⁶

6 Commission regulations also provide that if the treasurer of a political committee
7 "discovers that [a contribution] is illegal based on new evidence not available to the political
8 committee at the time of receipt and deposit," *e.g.*, it is a contribution in the name of another,
9 "the treasurer shall refund the contribution to the contributor within thirty days[.]"²⁷

10 2. The Available Record Indicates That Garipalli and DEFH Violated
11 52 U.S.C. § 30122

12 The available record indicates that DEFH was not the true contributor and that Garipalli
13 was, in fact, the true source of the \$1 million contributed to CFP. Garipalli acknowledges that he
14 authorized a transfer of funds from his personal account to DEFH for the purpose of making a

²⁴ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)).

²⁵ *O'Donnell*, 608 F.3d at 555. Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²⁶ As the court in *O'Donnell* acknowledged, the Commission's earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control "over the choice of the recipient candidate." 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee, like the contribution at issue in this matter.

²⁷ 11 C.F.R. § 103.3(b)(2).

1 contribution.²⁸ In addition, DEFH was organized the day before it made the contribution to CFP,
2 and it does not appear to have conducted any business in the one-day period between its
3 formation and the contribution at issue.²⁹ DEFH therefore appears to have been used as a
4 conduit contribution vehicle. Section 30122 of the Act specifically prohibits contributions that
5 are structured to prevent the public disclosure of the true contributor; unlike a political
6 committee, which must disclose the sources of its funds, a conduit contribution vehicle
7 undermines the electorate's ability to "react to the speech of corporate entities in a proper way[,]
8 . . . make informed decisions[,] and give proper weight to different speakers and messages."³⁰
9 Neither the corporate nature of the conduit, nor the fact that it held legal title to the funds, alters
10 that analysis. In this instance, DEFH was not the true contributor because it received funds from
11 Garipalli for the specific purpose of making a contribution.³¹

12 Garipalli and DEFH contend that "they had no prior notice" of the "Section 30122 legal
13 standard" as applied to contributions by LLCs or closely-held corporations, since they claim that
14 the standard was announced on April 1, 2016, *i.e.*, several months after the contribution at

²⁸ DEFH 7014 Resp. at 3.

²⁹ DEFH avers that its major purpose "is to make and hold commercial investments for the benefit of entities controlled by Mr. Garipalli," but there are no facts in the record showing that the entity was used for that purpose, especially in the one-day period between its formation and the contribution at issue. DEFH 7017 Resp. at 4.

³⁰ *Citizens United*, 558 U.S. at 371 ("[P]rompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests." The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.").

³¹ See *O'Donnell*, 608 F.3d at 554; *Whittemore*, 776 F.3d at 1080.

1 issue.³² Their argument is unavailing because the Act has always prohibited contributions made
2 by one "person" with funds obtained from, or reimbursed by, another. The rationales set forth in
3 the April 1, 2016, Statements of Reasons attempted to reconcile that longstanding conclusion
4 with Commission precedent that treated contributions drawn on the accounts of closely-held
5 corporations as corporate contributions, which, until 2010, were prohibited under a different
6 provision of the Act, 52 U.S.C. § 30118.

7 Sections 30122 and 30118, however, prohibit different types of conduct and serve distinct
8 functions in the Act's regulatory framework. Section 30122 buttresses the Act's disclosure
9 framework by mandating that contributions not be structured so as to shield the identity of the
10 true contributor, while Section 30118 is one of several "source prohibitions" that legally exclude
11 contributions from particular sources, *e.g.*, federal contractors, foreign nationals, and, for some
12 committees, corporations and labor unions.³³ As such, the legal developments that altered the
13 scope of Section 30118, by recognizing that corporations are legally entitled to make unlimited
14 contributions to IEOPCs, did not alter the scope of Section 30122.³⁴ Although DEFH could
15 legally make a contribution to CFP, it could not do so with funds that Garipalli provided to it for
16 that specific purpose. Because that is precisely what happened, we recommend that the

³² DEFH 7014 Resp. at 2–3 (citing Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016)).

³³ See 52 U.S.C. §§ 30118, 30119, 30121.

³⁴ See *Citizens United*, 558 U.S. at 310; *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Memorandum to the Comm'n from Daniel A. Petalas, Assoc. Gen. Counsel for Enforcement, FEC, *et al.*, at 9–10 (Apr. 8, 2014). Consider that if Garipalli had directed his funds to a foreign national, instead of a statutory trust, for the purpose of having that foreign national make a contribution, the resulting contribution would have violated both the disclosure and the prohibited-source aspects of the Act, *i.e.*, Section 30122 and 52 U.S.C. § 30121, the provision of the Act that prohibits foreign national contributions.

Commission find reason to believe that Garipalli and DEFH violated 52 U.S.C. § 30122, and investigate this transaction.³⁵

3. The Commission Should Take No Action at This Time as to the Allegation That CFP Violated 52 U.S.C. § 30122

CFP has denied the allegation that it knowingly accepted a contribution in the name of another, and the available facts do not specifically undermine its assertion.³⁶ However, CFP's receipt of a \$1 million contribution — constituting nearly a third of its total receipts up to that point — from an LLC that was formed one day before, reasonably suggests that CFP may have known that this contribution was made in the name of another.³⁷ However, because we recommend that the Commission investigate Garipalli and DEFH with respect to this contribution, and may thereby uncover additional information pertaining to CFP's knowledge at the time the contribution was made, we also recommend that the Commission take no action at this time as to the allegation that CFP violated 52 U.S.C. § 30122.

³⁵ Although Garipalli acknowledges that he is the true contributor, which was disclosed to the public when CFP amended its 2015 Year-End Report, the available record does not include all of the information we believe necessary to fully assess the appropriate disposition of this matter. Specifically, we do not know whether Garipalli sought advice of counsel prior to making the contribution through DEFH, or was otherwise aware that his conduct would violate the law. The record also does not indicate whether Garipalli communicated with CFP, prior to making the contribution, with respect to how the contribution would be reported. As such, we do not recommend that the Commission make a knowing and willful finding at this time, or approve conciliation with Garipalli and DEFH without developing the factual record through a limited investigation. By contrast, in MUR 6485, the available record indicated that the true contributor, Edward Conard, had sought advice of counsel and therefore believed that it was legal to make a contribution through an LLC conduit; based on that information, we recommended that the Commission make a non-knowing-and-willful reason to believe finding as to Conard and the conduit, W Spann LLC, and approve pre-probable cause conciliation. The available record also indicated that the recipient committee, Restore our Future, had no prior contact with Conard before receiving the contribution from W Spann LLC; based on that information, we recommended a no reason to believe finding as to Restore our Future. See First Gen. Counsel's Report at 3–4, 13, 16, MUR 6485 (W Spann LLC) (Aug. 28, 2012).

³⁶ CFP 7014/7017 Resp. at 2.

³⁷ From its date of organization, August 5, 2015, to December 31, 2015, CFP reported total receipts of \$3,168,311.89. Garipalli's \$1 million contribution in the name of DEFH was the largest single contribution that the committee had received to that point. See CFP Amended 2015 Year-End Report (July 15, 2016).

1 4. The Commission Should Dismiss the Allegation That CFP Violated
2 11 C.F.R. § 103.3(b)(2)

3 Once CFP became aware that the \$1 million contribution from DEFH was made in the
4 name of another, it was required to return the funds to the true contributor, Garipalli, within
5 thirty days.³⁸ The available record indicates that CFP became aware that Garipalli was the true
6 contributor on or before June 1, 2016, when Garipalli requested that CFP amend its disclosure
7 report. CFP did not refund the contribution within thirty days, as required under § 103.3(b)(2),
8 but amended the relevant disclosure report on July 15, 2016, to attribute the contribution to
9 Garipalli. Although a no reason to believe finding would not be appropriate absent a timely
10 refund of the contribution, we acknowledge that by amending the relevant disclosure report, CFP
11 “effectively remedied the [§ 103.3(b)(2)] violation” since Garipalli was lawfully entitled to make
12 the contribution in his own name; thus, as a practical matter, there is “nothing to be gained by
13 obligating a refund” here.³⁹ We therefore recommend that the Commission exercise its
14 prosecutorial discretion to dismiss the allegation that CFP violated 11 C.F.R. § 103.3(b)(2).

15 5. The Available Record Indicates That an Unknown Person and Décor
16 Services Violated 52 U.S.C. § 30122

17 The available information gives rise to a reasonable inference that Décor Services was
18 not the true source of the \$250,000 contribution to America Leads. The close temporal
19 proximity (16 days) between the entity’s formation and the contribution, along with the large
20 amount of the contribution, suggest that Décor Services was created and operated to serve as a

³⁸ 11 C.F.R. § 103.3(b)(2).

³⁹ CFP 7090 Resp. at 3 (quoting First Gen. Counsel’s Report at 16 n.8, MUR 6485 (W Spann LLC) (Aug. 28, 2012) (“[T]here is nothing to be gained by obligating [the committee] to refund the contribution to [the true contributor] . . . particularly given the fact that [the true contributor] is lawfully entitled to contribute the funds to [the committee] in his own name[.]”). CFP asserts that it “properly followed available precedent” with respect to refunding a contribution made by another, in the name of an LLC, where the true contributor was lawfully entitled to make the contribution in his own name. *Id.*

1 straw donor for the person who was the true source. Indeed, there is no public record of Décor
2 Services engaging in any non-political activity — its only known activities are the \$250,000
3 contribution to America Leads and another \$250,000 contribution to Conservative Solutions
4 PAC made about a week later.⁴⁰

5 Besides stating that Décor Services is a “for profit LLC,” the Response does not provide
6 any other information about the entity’s income-generating activities or the source of the funds
7 used to make the contribution to America Leads.⁴¹ And even if the entity was formed to engage
8 in business beyond serving as an intermediary for the contribution in question, that does not
9 resolve the question as to whether Décor Services, in this specific instance, received funds from
10 another person for the purpose of transmitting those funds to a political committee in Décor
11 Services’ name.⁴²

12 In sum, the available information supports a reasonable inference that Décor Services
13 received outside funds for the specific purpose of making a contribution to America Leads, and
14 the factual record does not contain any countervailing evidence; its \$250,000 contribution to

⁴⁰ See Statement of Reasons of Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); *see also* Statement of Reasons of Vice Chairman Steven T. Walther and Comm’rs Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

⁴¹ Décor Services MUR 7019 Resp. at 7.

⁴² See First General Counsel’s Report at 9–10, MUR 6995 (Heather Oaks, LLC) (recommending reason to believe that unknown respondent violated section 30122 where LLC made a \$100,000 contribution to an IEOPC two weeks after the LLC’s formation).

1 Conservative Solutions PAC may also have been made in the name of another. Therefore, we
2 recommend that the Commission find reason to believe that an Unknown Respondent violated
3 52 U.S.C. § 30122 by making a contribution in the name of another and that Décor Services
4 violated 52 U.S.C. § 30122 by knowingly permitting its name to be used to effect a contribution
5 in the name of another.

6 6. The Commission Should Take No Action at This Time as to the
7 Allegation That America Leads Violated 52 U.S.C. § 30122

8 America Leads argues that the Complaint does not allege that it violated the Act because
9 the Complaint asserts that Décor Services delivered funds to the committee without disclosing
10 the true source of money “at the time the contribution was made.”⁴³ At present, there are no
11 alleged facts tending to suggest that America Leads may have otherwise known that Décor
12 Services was not the true source of the contribution. However, because we recommend that the
13 Commission conduct further fact-finding into this transaction, and additional information would
14 help to clarify this issue, we also recommend that the Commission take no action at this time as
15 to the allegation that America Leads violated 52 U.S.C. § 30122.

16 7. The Commission Should Take No Action at This Time as to the
17 Allegation that America Leads Violated 11 C.F.R. § 103.3(b)(2)

18 The allegation that America Leads violated the law by failing to refund the \$250,000
19 contribution from Décor Services within thirty days of discovering that it was illegal rests on the
20 disputed conclusion that the contribution violated Section 30122 of the Act.⁴⁴ Because the
21 Commission must address that issue and we recommend that it first conduct additional fact-
22 finding into this transaction, we recommend that the Commission take no action at this time as to

⁴³ America Leads Resp. at 1, MUR 7019 (citing MUR 7019 Compl. ¶11).

⁴⁴ See MUR 7090 Compl. at 3-4.

the allegation that America Leads violated 11 C.F.R. § 103.3(b)(2).

B. Political Committee Status

1. Legal Standard

The Act defines a political committee as “any committee, club, association, or other group of persons” that receives aggregate contributions or makes aggregate expenditures in excess of \$1,000 during a calendar year.⁴⁵ Notwithstanding the threshold for contributions and expenditures, an organization will be considered a political committee only if its “major purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁴⁶ Political committees are required to register with the Commission, meet organizational and recordkeeping requirements, and file periodic disclosure reports.⁴⁷

2. The Commission Should Take No Action at This Time as to the Allegation that DEFH Violated 52 U.S.C. §§ 30102, 30103, 30104

The Complaint in MUR 7017 alleges that DEFH was required to register and report as a political committee, essentially arguing that the entity was both a conduit *and* a political committee. DEFH denies the allegation, claiming that its major purpose is to make and hold commercial investments for Garipalli and entities under his control, not to influence federal elections.⁴⁸ Respondents have admitted that Garipalli was the “true source” of the \$1 million contribution, and that DEFH was merely conveying Garipalli's funds.⁴⁹ Thus, DEFH does not

⁴⁵ 52 U.S.C. § 30101(4)(A).

⁴⁶ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

⁴⁷ *See* 52 U.S.C. §§ 30102, 30103, 30104.

⁴⁸ DEFH 7017 Resp. at 4.

⁴⁹ DEFH 7014 Resp. at 3; *see* 52 U.S.C. § 30101(4)(A); First Gen. Counsel's Report at 14, MUR 6485 (W Spann LLC); *see also* Adv. Op. 1996-18 at 2-3 (Int'l Ass'n of Fire Fighters) (June 14, 1996) (“The conduit [account

1 appear to satisfy the statutory threshold for political committee status. However, since we
2 recommend that the Commission further investigate DEFH with respect to this contribution, we
3 also recommend that the Commission take no action at this time as to the allegation that DEFH
4 violated 52 U.S.C. §§ 30102, 30103, 30104.

5 3. The Commission Should Take No Action at This Time as to the Allegation
6 that Décor Services Violated 52 U.S.C. §§ 30102, 30103, 30104

7 The Complaint in MUR 7019 alleges that Décor Services was required to register and
8 report as a political committee, essentially arguing that the entity was both a conduit *and* a
9 political committee. Décor Services denies the allegation, simply asserting that, pursuant to
10 *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), a “for profit LLC” such as Décor
11 Services cannot satisfy the requirements of political committee status, but the Response does not
12 provide any information as to what type of profit-making activities the entity conducts.⁵⁰ Rather,
13 the factual record supports a reasonable inference that Décor Services not was the “true source”
14 of contributions made in its name, but was instead conveying the funds of an unknown true
15 source. If further fact-finding supports that position, Décor Services would not satisfy the
16 statutory threshold for political committee status. However, since we recommend that the
17 Commission conduct additional fact-finding regarding this contribution, we also recommend that
18 the Commission take no action at this time as to the allegation that Décor Services violated
19 52 U.S.C. §§ 30102, 30103, 30104.

of labor union’s separate segregated fund], therefore, is not accepting or making contributions for the purposes of the Act and is not a political committee that would have to report the receipt and disbursement of such funds.”).

⁵⁰ Décor Services MUR 7019 Resp. at 6-7.

IV. PROPOSED INVESTIGATION

The proposed investigation would seek additional information regarding the circumstances of Garipalli's \$1 million contribution to CFP in the name of DE First Holdings, specifically inquiring whether Garipalli sought advice of counsel, or otherwise had a reasonable basis to conclude that his conduct was legal, and whether there were any prior communications between Garipalli or DEFH and representatives of CFP. In addition, we would seek additional information regarding the two \$250,000 contributions made in the name of Décor Services to America Leads and Conservative Solutions PAC. We will attempt to ascertain the circumstances of how Décor Services obtained the funds, and the identity of the person who provided the entity with the funds. We will attempt to conduct our inquiry through voluntary means, but we recommend that the Commission authorize the use of compulsory process.

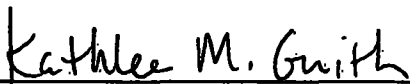
V. RECOMMENDATIONS

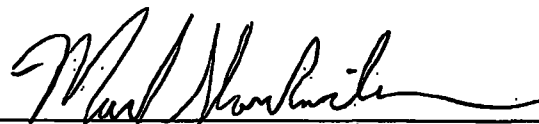
1. Find reason to believe that Vivek Garipalli and DE First Holdings violated 52 U.S.C. § 30122;
2. Take no action at this time as to the allegation that Coalition for Progress and Ana Rivas in her official capacity as treasurer violated 52 U.S.C. § 30122;
3. Dismiss the allegation that Coalition for Progress and Ana Rivas in her official capacity as treasurer violated 11 C.F.R. § 103.3(b)(2);
4. Take no action at this time as to the allegation that DE First Holdings violated 52 U.S.C. §§ 30102, 30103, 30104;
5. Find reason to believe that Décor Services, LLC and an Unknown Respondent violated 52 U.S.C. § 30122;
6. Take no action at this time as to the allegations that America Leads and Timothy A. Koch in his official capacity as treasurer violated 52 U.S.C. § 30122 and 11 C.F.R. § 103.3(b)(2);
7. Take no action at this time as to the allegation that Décor Services, LLC violated 52 U.S.C. §§ 30102, 30103, 30104;
8. Approve the attached Factual and Legal Analyses;
9. Authorize the use of compulsory process; and

10. Approve the appropriate letters.

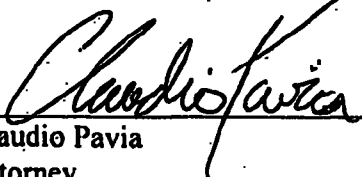
Lisa J. Stevenson
Acting General Counsel


Date: 2-10-17


Kathleen M. Guith
Associate General Counsel for Enforcement


Mark Shonkwiler
Assistant General Counsel


Jin Lee
Acting Assistant General Counsel


Claudio Pavia
Attorney


Saurav Ghosh
Attorney

Attachments

Factual and Legal Analysis — Décor Services, LLC

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3 Respondent: Décor Services, LLC

MURs 7019 & 7090

4 **I. INTRODUCTION**

5 This matter was generated by two complaints filed with the Federal Election Commission
6 (“Commission”) involving a \$250,000 contribution to America Leads, an independent-
7 expenditure-only political committee (“IEOPC”) made in the name of Décor Services, LLC
8 (“Décor Services”). See 52 U.S.C. § 30109(a)(1). Complainants assert that an unknown
9 individual, not Décor Services, was the true contributor, and that Décor Services knowingly
10 facilitated a contribution in the name of another.

11 Because the available record raises a reasonable inference that an unknown person made,
12 and DEFH knowingly permitted its name to be used to effect, a contribution in the name of
13 another, the Commission finds reason to believe that Décor Services, LLC violated 52 U.S.C.
14 § 30122.

15 **II. FACTUAL BACKGROUND**

16 Décor Services is an LLC that was formed under Delaware law on January 12, 2016.¹ On
17 January 28, 2016, it made a \$250,000 contribution to America Leads, an IEOPC that primarily
18 supported Chris Christie’s 2016 presidential campaign.² America Leads registered with the

¹ MUR 7019 Compl. at 2 (Mar. 2, 2016). There is no available information regarding the entity’s tax status.

² *Id.*; America Leads 2016 February Monthly Rpt. at 9 (Feb. 19, 2016); e.g., America Leads FEC Schedule E: 24/48 Hour Report of Independent Expenditures (“IE Report”) (Feb. 8, 2016); America Leads IE Report (Jan. 12, 2016); America Leads IE Report (Nov. 3, 2015); America Leads IE Report (July 10, 2015). The committee also made some independent expenditures in opposition to John Kasich’s 2016 campaign for president. E.g., America Leads IE Report (Feb. 2, 2016); America Leads IE Report (Jan. 31, 2016); America Leads IE Report (Jan. 28, 2016).

Commission on February 23, 2015, and Timothy Koch is its treasurer of record.³ On February 5, 2016, Décor Services made a second \$250,000 contribution to Conservative Solutions PAC, an IEOPC that primarily supported Marco Rubio's 2016 campaign for president.⁴ The address listed for Décor Services on the relevant disclosure reports belongs to its registered agent, the Corporation Service Company.⁵ According to the Designation of Counsel form that Décor Services filed in this matter, Scott Silver is the entity's Vice President and Secretary.⁶ He is the only known person associated with the entity.⁷

III. LEGAL ANALYSIS

A. Legal Standard

The Federal Election Campaign Act of 1971, as amended ("Act"), provides that a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."⁸ The term "person" for purposes of the Act and Commission regulations includes partnerships, corporations, and "any other organization or group of persons."⁹ The law prohibits a person

³ America Leads Statement of Organization at 1 (Feb. 23, 2015).

⁴ Conservative Solutions PAC 2016 March Monthly Rpt. at 16 (Mar. 20, 2016); *e.g.*, Conservative Solutions PAC IE Report (Feb. 2, 2016); Conservative Solutions PAC IE Report (Dec. 15, 2015); Conservative Solutions PAC IE Report (Oct. 31, 2015). The committee also made independent expenditures in opposition to other candidates including, Ted Cruz, *e.g.*, Conservative Solutions PAC IE Report (Jan. 28, 2016), Chris Christie, *e.g.*, Conservative Solutions PAC IE Report (Feb. 2, 2016), John Kasich, *e.g.*, Conservative Solutions PAC IE Report (Feb. 2, 2016); and Donald Trump, *e.g.*, Conservative Solutions PAC IE Report (Feb. 27, 2016).

⁵ MUR 7019 Compl. at 3.

⁶ Décor Services, Statement of Designation of Counsel, MUR 7019 (April 20, 2016).

⁷ See MUR 7019 Compl. at 3 (stating that the names of the principals of Décor Services are not publicly available).

⁸ 52 U.S.C. § 30101(8)(A).

⁹ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may

1 from making a contribution in the name of another person, knowingly permitting his or her name
2 to be used to effect such a contribution, or knowingly accepting such a contribution.¹⁰ The
3 Commission has included in its regulations illustrations of activities that constitute making a
4 contribution in the name of another:

- 5 (i) Giving money or anything of value, all or part of which was provided to the
6 contributor by another person (the true contributor) without disclosing the
7 source of money or the thing of value to the recipient candidate or committee
8 at the time the contribution is made; or
- 9 (ii) Making a contribution of money or anything of value and attributing as the
10 source of the money or thing of value another person when in fact the
11 contributor is the source.¹¹

12 Commission regulations also prohibit “knowingly help[ing] or assist[ing] any person in
13 making a contribution in the name of another.”¹² The requirement that a contribution be made in
14 the name of its true source promotes Congress’s objective of ensuring the complete and accurate
15 disclosure by candidates and committees of the political contributions they receive.¹³ Courts
16 therefore have uniformly rejected the assertion that “only the person who actually transmits

contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. See 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

¹⁰ 52 U.S.C. § 30122; see 11 C.F.R. § 110.4(b).

¹¹ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

¹² *Id.* § 110.4(b)(1)(iii).

¹³ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.”) (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

1 funds . . . makes the contribution,"¹⁴ recognizing that "it is implausible that Congress, in seeking
2 to promote transparency, would have understood the relevant contributor to be [an] intermediary
3 who merely transmitted the campaign gift."¹⁵

4 Consequently, both the Act and the Commission's implementing regulations provide that
5 a person who furnishes another with funds for the purpose of contributing to a candidate or
6 committee "makes" the resulting contribution.¹⁶ This is true whether funds are advanced to
7 another person to make a contribution in that person's name or promised as reimbursement of a
8 solicited contribution.¹⁷ Because the concern of the law is the true source from which a
9 contribution to a candidate or committee originates, the Commission must look to the structure
10 of the transaction itself and the arrangement between the parties to determine who "made" a
11 given contribution.¹⁸

¹⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

¹⁵ *O'Donnell*, 608 F.3d at 554; see also *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

¹⁶ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the source of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)).

¹⁷ *O'Donnell*, 608 F.3d at 555. Moreover, the "key issue . . . is the source of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

¹⁸ As the court in *O'Donnell* acknowledged, the Commission's earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control "over the choice of the recipient candidate." 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee, like the contribution at issue in this matter.

B. The Available Record Indicates That an Unknown Person Made, and Décor Services Knowingly Facilitated, a Contribution in the Name of Another

The available information gives rise to a reasonable inference that Décor Services was not the true source of the \$250,000 contribution to America Leads. The close temporal proximity (16 days) between the entity's formation and the contribution, along with the large amount of the contribution, suggest that Décor Services was created and operated to serve as a straw donor for the person who was the true source. Indeed, there is no public record of Décor Services engaging in any non-political activity — its only known activities are the \$250,000 contribution to America Leads and another \$250,000 contribution to Conservative Solutions PAC made about a week later.¹⁹

Besides stating that Décor Services is a “for profit LLC,” the Response does not provide any other information about the entity's income-generating activities or the source of the funds used to make the contribution to America Leads.²⁰ And even if the entity was formed to engage in business beyond serving as an intermediary for the contribution in question, that does not resolve the question as to whether Décor Services, in this specific instance, received funds from

¹⁹ See Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); see also Statement of Reasons of Vice Chairman Steven T. Walther and Comm'rs Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

²⁰ Décor Services MUR 7019 Resp. at 7.

1 another person for the purpose of transmitting those funds to a political committee in Décor

2 Services' name.

3 In sum, the available information supports a reasonable inference that Décor Services
4 received outside funds for the specific purpose of making a contribution to America Leads, and
5 the factual record does not contain any countervailing evidence; its \$250,000 contribution to
6 Conservative Solutions PAC may also have been made in the name of another. Therefore, the
7 Commission finds reason to believe that Décor Services violated 52 U.S.C. § 30122 by
8 knowingly permitting its name to be used to effect a contribution in the name of another.